



General Assembly

**Amendment**

February Session, 2004

LCO No. 4362

\*HB0555404362HDO\*

Offered by:

REP. LAWLOR, 99<sup>th</sup> Dist.

REP. FARR, 19<sup>th</sup> Dist.

To: House Bill No. 5554

File No. 443

Cal. No. 310

**"AN ACT ESTABLISHING A PSYCHIATRIC PRETRIAL  
ALTERNATIVE PLACEMENT PROGRAM."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 17a-540 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2004*):

5 [When] As used in sections 17a-540 to 17a-550, inclusive, and  
6 section 503 of this act, unless otherwise expressly stated or unless the  
7 context otherwise requires:

8 [(a)] (1) "Facility" means any inpatient or outpatient hospital, clinic  
9 [,] or other facility for the diagnosis, observation or treatment of  
10 persons with psychiatric disabilities;

11 [(b)] (2) "Patient" means any person being treated in a facility;

12 [(c)] (3) "Persons with psychiatric disabilities" means those children

13 and adults who are suffering from one or more mental disorders, as  
14 defined in the most recent edition of the American Psychiatric  
15 Association's "Diagnostic and Statistical Manual of Mental Disorders";

16 [(d)] (4) "Voluntary patient" means any patient sixteen years of age  
17 or older who applies in writing for and is admitted to a hospital for  
18 observation, diagnosis or treatment of a mental disorder or any patient  
19 under sixteen years of age whose parent or legal guardian applies in  
20 writing for such observation, diagnosis or treatment;

21 [(e)] (5) "Involuntary patient" means any patient hospitalized  
22 pursuant to an order of a judge of the Probate Court after an  
23 appropriate hearing or a patient hospitalized for emergency diagnosis,  
24 observation or treatment upon certification of a qualified physician;

25 [(f)] (6) "Family" means spouse or next of kin;

26 [(g)] (7) "Head of the hospital" or "head of the facility" means the  
27 superintendent or medical director of a hospital or facility, or his  
28 designated delegate;

29 [(h)] (8) "Informed consent" means permission given competently  
30 and voluntarily after a patient has been informed of the reason for  
31 treatment, the nature of the proposed treatment, the advantages or  
32 disadvantages of the treatment, medically acceptable alternative  
33 treatment, the risks associated with receiving the proposed treatment  
34 and the risk of no treatment;

35 [(i)] (9) "Medically harmful" means capable of inflicting serious  
36 mental or physical injury on the patient, or producing in the patient a  
37 disturbed mental state or impaired judgment which may be grossly  
38 detrimental to his physical or mental well being;

39 [(j)] (10) "Psychosurgery" means those operations defined as  
40 lobotomy, psychiatric surgery, behavioral surgery [,] and all other  
41 forms of brain surgery, if the surgery is performed for the purpose of  
42 modification or control of thoughts, feelings, actions [,] or behavior

43 rather than the treatment of a known and diagnosed physical disease  
44 of the brain;

45 [(k)] (11) "Shock therapy" means a form of psychiatric treatment in  
46 which electric current, insulin, carbon dioxide [,] or indoklon, or other  
47 similar [agents] agent, is administered to the patient and results in a  
48 loss of consciousness or a convulsive or comatose reaction;

49 [(1)] (12) "Direct threat of harm" means that the patient's clinical  
50 history demonstrates a pattern of serious physical injury or life-  
51 threatening injury to self or to others which is caused by the  
52 psychiatric disabilities with which the patient has been diagnosed and  
53 is documented by objective medical and other factual evidence. Such  
54 evidence of past pattern of dangerous behavior shall be manifested in  
55 the patient's medical history and there shall exist a high probability  
56 that the patient will inflict substantial harm on himself or others; and

57 (13) "Special limited conservator" means a licensed health care  
58 provider with specialized training in the treatment of persons with  
59 psychiatric disabilities appointed by a judge of the Probate Court with  
60 specific authority to consent to the administration of medication to a  
61 defendant during the pendency of such defendant's placement in the  
62 custody of the Commissioner of Mental Health and Addiction Services  
63 pursuant to section 54-56d, as amended. Upon the termination of the  
64 patient's placement in the custody of the commissioner pursuant to  
65 section 54-56d, as amended, the special limited conservatorship shall  
66 automatically terminate.

67 Sec. 502. Section 17a-543 of the general statutes, as amended by  
68 section 1 of public act 03-31, is repealed and the following is  
69 substituted in lieu thereof (*Effective October 1, 2004*):

70 (a) No patient shall receive medication for the treatment of the  
71 psychiatric disabilities of such patient without the informed consent of  
72 such patient, except in accordance with procedures set forth in  
73 subsections (b), (d), (e) and (f) of this section or in accordance with  
74 section 503 of this act or section 17a-566 or 54-56d, as amended.

75 (b) No medical or surgical procedures may be performed without  
76 the patient's written informed consent or, if the patient has been  
77 declared incapable of caring for himself or herself pursuant to sections  
78 45a-644 to 45a-662, inclusive, and a conservator of the person has been  
79 appointed pursuant to section 45a-650, the written consent of such  
80 conservator. If the head of the hospital, in consultation with a  
81 physician, determines that the condition of an involuntary patient not  
82 declared incapable of caring for himself or herself pursuant to said  
83 sections is of an extremely critical nature and such patient is incapable  
84 of informed consent, medical or surgical procedures may be performed  
85 with the written informed consent of: (1) The patient's conservator or  
86 guardian, if he or she has one; (2) such person's next of kin; (3) a  
87 person designated by the patient pursuant to section 1-56r, as  
88 amended; or (4) a qualified physician appointed by a judge of the  
89 Probate Court. Notwithstanding the provisions of this section, if  
90 obtaining the consent provided for in this section would cause a  
91 medically harmful delay to a voluntary or involuntary patient whose  
92 condition is of an extremely critical nature, as determined by personal  
93 observation by a physician or the senior clinician on duty, emergency  
94 treatment may be provided without consent.

95 (c) No psychosurgery or shock therapy shall be administered to any  
96 patient without such patient's written informed consent, except as  
97 provided in this subsection. Such consent shall be for a maximum  
98 period of thirty days and may be revoked at any time. If it is  
99 determined by the head of the hospital and two qualified physicians  
100 that the patient has become incapable of giving informed consent,  
101 shock therapy may be administered upon order of the [Court of]  
102 Probate Court if, after hearing, such court finds that the patient is  
103 incapable of informed consent and there is no other, less intrusive  
104 beneficial treatment. An order of the [Court of] Probate Court  
105 authorizing the administration of shock therapy pursuant to this  
106 subsection shall be effective for not more than forty-five days.

107 (d) A facility may establish an internal procedure governing  
108 decisions concerning involuntary medication treatment for inpatients.

109 [This] Such procedure shall provide (1) that any decision concerning  
110 involuntary medication treatment shall be made by a person who is  
111 not employed by the facility in which the patient is receiving  
112 treatment, provided the selection of such person shall not be made  
113 until the patient's advocate has had reasonable opportunity to discuss  
114 such selection with the facility, (2) written and oral notification to the  
115 patient of available advocacy services, (3) notice to the patient and his  
116 advocate, if one has been chosen, of any proceeding for the  
117 determination of the necessity for involuntary treatment not less than  
118 forty-eight hours prior to such proceeding, (4) the right of the patient  
119 to representation during any such proceeding, (5) questioning of any  
120 witness at any such proceeding including, if requested, one or both of  
121 the physicians who made the determination pursuant to subsection (e)  
122 of this section concerning the patient's capacity to give informed  
123 consent and the necessity of medication for the patient's treatment, and  
124 (6) a written decision. If a decision is made in accordance with the  
125 standards set forth in this section that a patient shall receive  
126 involuntary medication, and there is substantial probability that  
127 without such medication for the treatment of the psychiatric  
128 disabilities of such patient the condition of the patient will rapidly  
129 deteriorate, such involuntary medication may be provided for a period  
130 not to exceed thirty days or until a decision is made by the Probate  
131 Court under subsection (e) or (f) of this section, whichever is sooner.

132 (e) (1) If it is determined by the head of the hospital and two  
133 qualified physicians that a patient is incapable of giving informed  
134 consent to medication for the treatment of such patient's psychiatric  
135 disabilities and such medication is deemed to be necessary for such  
136 patient's treatment, a facility may utilize the procedures established in  
137 subsection (d) of this section and may apply to the [Court of] Probate  
138 Court for appointment of a conservator of the person with specific  
139 authority to consent to the administration of medication or, in a case  
140 where a conservator of the person has previously been appointed  
141 under section 45a-650, the facility or the conservator may petition the  
142 Probate Court to grant such specific authority to the conservator. The

143 conservator shall meet with the patient and the physician, review the  
144 patient's written record and consider the risks and benefits from the  
145 medication, the likelihood and seriousness of adverse side effects, the  
146 preferences of the patient, the patient's religious views, and the  
147 prognosis with and without medication. After consideration of such  
148 information, the conservator shall either consent to the patient  
149 receiving medication for the treatment of the patient's psychiatric  
150 disabilities or refuse to consent to the patient receiving such  
151 medication.

152 (2) The authority of a conservator to consent to the administration of  
153 medication under subdivision (1) of this subsection shall be effective  
154 for [no] not more than one hundred twenty days. In the case of  
155 continuous hospitalization of the patient beyond such one hundred  
156 twenty days, if the head of the hospital and two qualified physicians  
157 determine that the patient continues to be incapable of giving  
158 informed consent to medication for the treatment of such patient's  
159 psychiatric disabilities and such medication is deemed to be necessary  
160 for such patient's treatment, the authority of the conservator to consent  
161 to the administration of medication may be extended for a period not  
162 to exceed one hundred twenty days by order of the Probate Court  
163 without a hearing upon application by the head of the hospital.  
164 Prompt notice of the order shall be given to the patient, conservator  
165 and facility.

166 (f) (1) If it is determined by the head of the hospital and two  
167 qualified physicians that (A) a patient is capable of giving informed  
168 consent but refuses to consent to medication for treatment of such  
169 patient's psychiatric disabilities, (B) there is no less intrusive beneficial  
170 treatment, and (C) without medication, the psychiatric disabilities with  
171 which the patient has been diagnosed will continue unabated [,] and  
172 place the patient or others in direct threat of harm, [as defined in  
173 subsection (l) of section 17a-540,] the facility may utilize the  
174 procedures established in subsection (d) of this section and may apply  
175 to the [Court of] Probate Court to authorize the administration to the  
176 patient of medication for the treatment of the patient's psychiatric

177 disabilities, despite the refusal of the patient to consent to such  
178 medication.

179 (2) An order authorizing the administration of medication under  
180 subdivision (1) of this subsection shall be effective for [no] not more  
181 than one hundred twenty days. In the case of continuous  
182 hospitalization of the patient beyond such one hundred twenty days, if  
183 the head of the hospital and two qualified physicians determine that  
184 (A) the patient continues to be capable of giving informed consent but  
185 refuses to consent to medication for treatment of such patient's  
186 psychiatric disabilities, (B) there is no less intrusive beneficial  
187 treatment, and (C) without medication, the psychiatric disabilities with  
188 which the patient has been diagnosed will continue unabated [,] and  
189 place the patient or others in direct threat of harm, [as defined in  
190 subsection (l) of section 17a-540,] the order may be extended for a  
191 period not to exceed one hundred twenty days by order of the Probate  
192 Court without a hearing. Prompt notice of the order shall be given to  
193 the patient and facility.

194 (g) If a decision has been made to administer involuntary  
195 medication to a patient pursuant to subsection (d) of this section, the  
196 patient may petition the [Court of] Probate Court to expedite the  
197 hearing on an application filed by the facility pursuant to subsection  
198 (e) or (f) of this section or, if no application has been filed, to hold a  
199 hearing to decide whether to allow the administration of involuntary  
200 medication. Either hearing shall be held within fifteen days after the  
201 date of the patient's petition.

202 (h) For the purposes of this section, "voluntary patient" means any  
203 patient sixteen years of age or older who applies in writing for, and is  
204 admitted to, a hospital for observation, diagnosis or treatment of a  
205 mental disorder.

206 (i) Unless there is a serious risk of harm to the patient or others,  
207 based upon the patient's past history or current condition, nothing in  
208 this section authorizes any form of involuntary medical, psychological

209 or psychiatric treatment of any patient who in the sincere practice of  
210 his or her religious beliefs is being treated by prayer alone in  
211 accordance with the principles and practices of a church or religious  
212 denomination by a duly accredited practitioner or ordained minister,  
213 priest or rabbi thereof. The Department of Mental Health and  
214 Addiction Services shall adopt regulations, in accordance with chapter  
215 54, to implement the purposes of this subsection.

216 Sec. 503. (NEW) (*Effective October 1, 2004*) (a) (1) If it is determined  
217 by the head of the hospital and two qualified physicians that a patient  
218 who is a defendant placed in the custody of the Commissioner of  
219 Mental Health and Addiction Services pursuant to section 54-56d of  
220 the general statutes, as amended, is incapable of giving informed  
221 consent to medication for the treatment of such patient's psychiatric  
222 disabilities and such medication is deemed to be necessary for such  
223 patient's treatment, the facility in which such patient is placed may  
224 petition the probate court for the district in which such facility is  
225 located for appointment of a special limited conservator with specific  
226 authority to consent to the administration of medication, provided an  
227 employee of such facility shall not be appointed or serve as the special  
228 limited conservator. The special limited conservator shall meet with  
229 the patient and the physician, review the patient's written record and  
230 consider the risks and benefits from the medication, the likelihood and  
231 seriousness of adverse side effects, the preferences of the patient, the  
232 patient's religious views, and the prognosis with and without  
233 medication. After consideration of such information, the special  
234 limited conservator shall either consent to the patient receiving  
235 medication for the treatment of the patient's psychiatric disabilities or  
236 refuse to consent to the patient receiving such medication.

237 (2) The authority of a special limited conservator to consent to the  
238 administration of medication under subdivision (1) of this subsection  
239 shall be effective for not more than one hundred twenty days. In the  
240 case of continuous hospitalization of the patient beyond such one  
241 hundred twenty days, if the head of the hospital and two qualified  
242 physicians determine that the patient continues to be incapable of

243 giving informed consent to medication for the treatment of such  
244 patient's psychiatric disabilities and such medication is deemed to be  
245 necessary for such patient's treatment, the authority of the special  
246 limited conservator to consent to the administration of medication may  
247 be extended for a period not to exceed one hundred twenty days by  
248 order of the Probate Court without a hearing upon application by the  
249 head of the hospital. Prompt notice of the order shall be given to the  
250 patient, special limited conservator and facility.

251 (3) The reasonable compensation of a special limited conservator  
252 appointed under this subsection shall be established by the Probate  
253 Court Administrator and paid from the Probate Court Administration  
254 Fund.

255 (b) (1) If it is determined by the head of the hospital and two  
256 qualified physicians that (A) a patient who is a defendant placed in the  
257 custody of the Commissioner of Mental Health and Addiction Services  
258 pursuant to section 54-56d of the general statutes, as amended, is  
259 capable of giving informed consent but refuses to consent to  
260 medication for treatment of such patient's psychiatric disabilities, (B)  
261 there is no less intrusive beneficial treatment, and (C) without  
262 medication, the psychiatric disabilities with which the patient has been  
263 diagnosed will continue unabated and place the patient or others in  
264 direct threat of harm, the facility in which such patient is placed may  
265 petition the probate court for the district in which such facility is  
266 located to authorize the administration to the patient of medication for  
267 the treatment of the patient's psychiatric disabilities, despite the refusal  
268 of the patient to consent to such medication.

269 (2) An order authorizing the administration of medication under  
270 subdivision (1) of this subsection shall be effective for not more than  
271 one hundred twenty days. In the case of continuous hospitalization of  
272 the patient beyond such one hundred twenty days, if the head of the  
273 hospital and two qualified physicians determine that (A) the patient  
274 continues to be capable of giving informed consent but refuses to  
275 consent to medication for treatment of such patient's psychiatric

276 disabilities, (B) there is no less intrusive beneficial treatment, and (C)  
277 without medication, the psychiatric disabilities with which the patient  
278 has been diagnosed will continue unabated and place the patient or  
279 others in direct threat of harm, the order may be extended for a period  
280 not to exceed one hundred twenty days by order of the Probate Court  
281 without a hearing. Prompt notice of the order shall be given to the  
282 patient and facility.

283 (c) Unless there is a serious risk of harm to the patient or others,  
284 based upon the patient's past history or current condition, nothing in  
285 this section authorizes any form of involuntary medical, psychological  
286 or psychiatric treatment of any patient who in the sincere practice of  
287 his or her religious beliefs is being treated by prayer alone in  
288 accordance with the principles and practices of a church or religious  
289 denomination by a duly accredited practitioner or ordained minister,  
290 priest or rabbi thereof.

291 (d) Nothing in this section shall be construed to limit the application  
292 of sections 45a-644 to 45a-663, inclusive, of the general statutes, except  
293 as specifically provided in this section.

294 Sec. 504. Section 4-141 of the general statutes is repealed and the  
295 following is substituted in lieu thereof (*Effective October 1, 2004*):

296 As used in this chapter: "Claim" means a petition for the payment or  
297 refund of money by the state or for permission to sue the state; "just  
298 claim" means a claim which in equity and justice the state should pay,  
299 provided the state has caused damage or injury or has received a  
300 benefit; "person" means any individual, firm, partnership, corporation,  
301 limited liability company, association or other group, including  
302 political subdivisions of the state; "state agency" includes every  
303 department, division, board, office, commission, arm, agency and  
304 institution of the state government, whatever its title or function, and  
305 "state officers and employees" includes every person elected or  
306 appointed to or employed in any office, position or post in the state  
307 government, whatever such person's title, classification or function

308 and whether such person serves with or without remuneration or  
309 compensation, including judges of probate courts, [and] employees of  
310 such courts and special limited conservators appointed by such courts  
311 pursuant to section 503 of this act. In addition to the foregoing, "state  
312 officers and employees" includes attorneys appointed as victim  
313 compensation commissioners, attorneys appointed by the Public  
314 Defenders Services Commission as public defenders, assistant public  
315 defenders or deputy assistant public defenders, and attorneys  
316 appointed by the court as special assistant public defenders, the  
317 Attorney General, the Deputy Attorney General and any associate  
318 attorney general or assistant attorney general, any other attorneys  
319 employed by any state agency, any commissioner of the Superior  
320 Court hearing small claims matters or acting as a fact-finder, arbitrator  
321 or magistrate or acting in any other quasi-judicial position, any person  
322 appointed to a committee established by law for the purpose of  
323 rendering services to the Judicial Department including, but not  
324 limited to, the Legal Specialization Screening Committee, the State-  
325 Wide Grievance Committee, the Client Security Fund Committee, and  
326 the State Bar Examining Committee, any member of a  
327 multidisciplinary team established by the Commissioner of Children  
328 and Families pursuant to section 17a-106a, and any physicians or  
329 psychologists employed by any state agency. "State officers and  
330 employees" shall not include any medical or dental intern, resident or  
331 fellow of The University of Connecticut when (1) the intern, resident or  
332 fellow is assigned to a hospital affiliated with the university through  
333 an integrated residency program, and (2) such hospital provides  
334 protection against professional liability claims in an amount and  
335 manner equivalent to that provided by the hospital to its full-time  
336 physician employees."